IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL COPY

OCTOBER TERM, 1974

NO. 74-5116

JACK ROLAND MURPHY,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF PETITIONER

SWICKLE, KATZ & BROTMAN, P.A.
Attorneys for Petitioner
One Lincoln Road Building
Suite 219
Miami Beach, Florida 33139

INDEX

	Page
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE AND FACTS	1
REPLY ARGUMENT	1-3
CONCLUSION	3

TABLE OF AUTHORITIES

	Page
Irvin v. Dowd, 1961, 366 U.S. 717, 81 S. Ct. 1639, 6 L.Ed.2d 751.....	2
Marshall v. United States, 360 U.S. 310 (1959).....	1,2,3
Rideau v. Louisiana, (1963) 373 U.S. 723, 83 S.Ct. 1417, 10 L.Ed.2d 663.....	2
Sheppard v. Maxwell, 1966, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600.....	2
United States ex rel. Doggett v. Yeager, 472 F.2d 229 (3rd Cir. 1973).....	1,2,3
United States v. Isaacs, 351 F.Supp. 1323.....	3

QUESTIONS PRESENTED

I

WHETHER, THE PETITIONER, WAS DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BECAUSE OF THE STATE TRIAL COURT'S FAILURE TO GRANT PETITIONER'S PRETRIAL MOTION FOR A CHANGE OF VENUE, OR TO EXCLUDE CERTAIN PROSPECTIVE JURORS BECAUSE:

(A) ALL OF THE PROSPECTIVE JURORS EXAMINED HAD OBTAINED KNOWLEDGE FROM THE NEWS MEDIA PRIOR TO THEIR EXAMINATION IN COURT THAT THE PETITIONER HAD BEEN PREVIOUSLY CONVICTED OF EITHER, BREAKING OR MURDER IN THE FIRST DEGREE.

(B) ALL OF THE PROSPECTIVE JURORS HAD BEEN SUBJECTED TO EXTENSIVE NEWS MEDIA COVERAGE FOR MORE THAN THREE YEARS, CONCERNING NOT ONLY THE FACTS OF THE CASE WHICH IS NOW BEFORE THIS COURT, BUT ALSO FACTS SURROUNDING TWO MURDERS WHICH OCCURED SHORTLY BEFORE THIS CASE AND SEVERAL PUBLICIZED LOCAL AND STATE INVESTIGATIONS DEALING WITH PETITIONER'S BEING RELEASED ON BOND AND WITH A RULING BY THE TRIAL COURT DECLARING PETITIONER INCOMPETENT OR INSANE.

STATEMENT OF THE CASE AND FACTS

Both the history of this case and the facts have been set forth in Petition for Writ of Certiorari.

ARGUMENT

The Respondent's contention with regard to Question 1(A) of the Petition is simply that while Marshall v. United States, 360 U.S. 310 (1959) is factually indistinguishable from this case, no appellate court or this Court ever stated that Marshall " is now applicable as an aspect of due process". The Respondent conceeds that the 3rd Circuit in United States ex rel. Doggett vs. Yeager,

472 F. 2d 229 (3rd Cir., 1973) is the only exception but suggests that said case is not applicable here because it involved different facts.

It is clear from a reading of Respondent's brief that it has failed to comprehend the precise issue before this Court. It is also evident that Respondent failed to consider the cases set forth in the Petition for Writ of Certiorari.

The gut issue here is whether the information which the jurors received through the news media prior to trial, to-wit: That Respondent had recently been convicted of murder and had years before been convicted of a sensational jewel theft was so prejudicial on its face that notwithstanding each jurors assurance of impartiality, said juror should have beenexcused for cause. And the failure of the Trial Court to either excuse said juror or grant a Change of Venue constituted a denial of due process and equal protection of the laws.

Nowhere is its brief does the Respondent ever argue that the jurors' knowledge of Petitioner's prior convictions is not prejudicial. The thrust of its argument is that so long as jurors give assurances of impartiality, there is no error committed in not excusing them. Such is not the law.

This Court in Marshall v. United States, supra, recognized that information of prior convictions is so prejudicial, that even with jurors assurances of impartiality, the jurors must be excluded. The Respondent's argument asks this Court to accept a double standard of prejudice. They argue that although such information may be prejudicial in Federal cases, it does not reach the proportions of prejudice to argue a violation of due process and equal protection of the laws. However, in a series of decisions by this Honorable Court , some citing Marshall v. United States, supra, the Respondent's argument is clearly rejected. See Irvin v. Dowd, 1961, 366 U.S. 717, 81 S. Ct. 1639, 6 L.Ed.2nd 751; Rideau v. Louisiana, (1963) 373 U.S. 723, 83 S.Ct. 1417, 10 L.Ed.2d 663; Sheppard v. Maxwell, 1966, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600.

The Third Circuit Court of Appeals in United States, ex. rel. Doggett v. Yeager, 472 F. 2d 229 (3rd Cir. 1973), recognized this Court's application of Marshall v. United States, supra, in State Court cases. Respondent's argument that the facts in Doggett are distinguishable from this case, is a distinction without a difference. The fact remains, that the Third Circuit set forth the proper application of Marshall v. United States, supra. See also United States v. Isaacs, 351 F. Supp. 1323.

A review of this case by this Honorable Court is clearly reflected by the nature of the question presented. The opinion of this Court will affect every defendant in a criminal case who seeks to have his case tried by a jury.

CONCLUSION

For the reasons set forth in this brief as well as the Petition for Writ of Certiorari, previously filed, the Petition for Certiorari should be granted and the Judgment of the Court of Appeals reversed.

Respectfully submitted,

SWICKLE, KATZ & BROTMAN, P.A.
Attorneys for the Petitioner
One Lincoln Road Building
Suite 219
Miami Beach, Florida 33139

BY: _____
HARVEY S. SWICKLE